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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules to Establish New)
Narrowband Personal)
Communications Services)

GEN Docket 90-314
ET Docket No. 92-100 ✓

To: The Commission

**OPPOSITION TO AIRTOUCH PETITION FOR PARTIAL RECONSIDERATION
AND TO PCIA PETITION FOR RECONSIDERATION**

Puerto Rico Telephone Company ("PRTC"), by its attorneys, opposes AirTouch Paging's "Petition for Partial Reconsideration" and the "Petition for Reconsideration of the Personal Communications Industry Association," both filed in the captioned proceeding on October 7, 1994 ("AirTouch Petition and "PCIA Petition," respectively).

AirTouch and PCIA both seek to modify the Second Memorandum Opinion and Order^{1/} by enlarging the pool of applicants eligible to bid for the narrowband response channels that the Commission set aside for existing paging licensees. Both of the proposals would undermine the Commission's reasons for creating the response channels, and, therefore, both Petitions should be denied.

I. AIRTOUCH PETITION

In its First Report and Order, 8 FCC Rcd 7162, 7165 (1993), the Commission restricted response channel eligibility to "existing paging licensees," defined in the Memorandum

^{1/} FCC 94-218, released August 25, 1994.

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Opinion and Order^{2/} as a paging licensee authorized under Part 22 or Part 90 of the Commission's Rules as of June 24, 1993 and operating a base station within the MTA or BTA for which the response channel is desired. In the Second Memorandum Opinion and Order, the Commission clarified the definition of "existing paging licensees" to include "licensees of conventional one-way paging base stations licensed pursuant to Part 22 or Part 90 of this chapter as of the application filing deadline for the paging response channels" which operate a base station within 20 miles of the MTA or BTA for which a response channel is desired. See revised § 22.130(a). The response channels can be used "only in paired communications with existing paging channels to provide mobile-to-base station communications." Id.

AirTouch argues that the Commission "should eliminate all eligibility restrictions for the paging response channels." AirTouch Petition at 4 (emphasis added). Moreover, AirTouch argues that licensees should be permitted to pair the response channels with new PCS channels in addition to existing paging channels. AirTouch Petition at 7-8.

AirTouch asserts that "the idea of restricting eligibility for the response channels arose prior to the Commission's adoption of auction procedures," and was "premised upon a lottery selection method where it made sense to restrict eligibility to those who could best use the

^{2/} 9 FCC Rcd 1309, 1313 (1994).

channels thereby preventing speculation." AirTouch Petition at 4, 5, citing First Report & Order, 8 FCC Rcd at 7195. According to AirTouch, now that auctions will be used rather than lotteries, "the original premise behind reserving these channels has evaporated" since "the auction process itself will weed out speculative applicants." AirTouch Petition at 5, 6.

AirTouch's argument is based on a faulty premise. The reason for reserving response channels for existing paging licensees had nothing to do with the use of lotteries. In fact, as early as the Notice of Proposed Rulemaking the Commission acknowledged the possibility of licensing PCS pursuant to competitive bidding and specifically requested comment on "whether lotteries or competitive bidding (if authorized by Congress) would be the most appropriate mechanism for licensing PCS" as well as comment on "possible competitive bidding rules." 7 FCC Rcd 5676, 5707. The Commission explained, "Although the Commission does not currently have competitive bidding authority, legislation is pending that would grant the Commission limited authority. . . . We seek comment on how best to implement competitive bidding, if it is authorized by Congress and the Commission decides to employ it for PCS." 7 FCC Rcd at 5710-11.

In the First Report and Order, the Commission explained that "licensee selection procedures" -- i.e., competitive bidding procedures -- "are the subject of legislation actively

being considered by Congress and will be addressed by the Commission in a further action." 8 FCC Rcd at 7162. Even though legislation authorizing competitive bidding procedures appeared to be imminent, the Commission set aside 12.5 kHz blocks "for use by existing paging operators." The Commission explained:

We also concur with those commenters that suggest that some response channels be provided for use by existing licensees. This will permit existing paging operations to be upgraded and provide some acknowledgement and messaging capability. We will therefore provide eight 12.5 kHz channels for use by existing common carrier and private paging licensees."

8 FCC Rcd at 7165.

Thus, in the order adopting the eligibility restriction, there was no indication that the type of licensing procedure ultimately used was relevant to the Commission's decision to reserve those channels. The decision was certainly not premised upon the use of lotteries, since the passage of legislation authorizing auctions appeared imminent. Contrary to AirTouch's argument, there was no discussion by the Commission of "best use" or of "risk of speculation." Rather, the only reason given for setting aside those channels was to allow existing paging licensees to upgrade their systems, apparently to compete with new narrowband PCS licensees.^{3/}

^{3/} If new narrowband PCS licensees wish to provide two-way service, they can bid for the paired PCS channels. There is no reason to allow the auction winner of an unpaired PCS channel to take away response channels from existing paging licensees who need the channels to upgrade their systems to compete with PCS.

After the legislation passed and the FCC adopted the use of competitive bidding for PCS licenses (including response channels), the Commission released its Memorandum Opinion and Order emphasizing that the response channels were set aside for bidding only by existing paging licensees to "allow an opportunity for existing paging licensees to upgrade their operations to provide acknowledgement and messaging capability." 9 FCC Rcd at 1313. The Commission again stated in its Third Report & Order in the spectrum auction proceeding^{4/} that eligibility for response channels "is restricted to incumbent licensees" and that those channels are "reserved for the upgrade of existing paging systems." 9 FCC Rcd at 2945, 2946.

Thus, AirTouch's argument that "the original premise behind reserving these channels has evaporated" since auctions are being used rather than lotteries is simply untrue. The use of lotteries was not the premise upon which the restriction was based. The purpose was to allow existing paging licensees to upgrade their systems to allow them to compete with PCS technology.

If AirTouch's Petition were granted, that purpose would be completely thwarted. While licensees with local paging facilities could immediately use response channels to upgrade their existing paging facilities, a company without a local presence would have no paging system to upgrade. That is why

^{4/} PP Docket No. 93-253, 9 FCC Rcd 2941 (1994).

AirTouch is also requesting that the Commission eliminate the requirement that these channels be paired with existing Part 22 or Part 90 channels, and instead allow them to be paired with any PCS channel.

If the Commission were to eliminate all eligibility restrictions for response channels, it is unlikely that local paging licensees would be able to outbid large national companies such as AirTouch for those licenses. Those entities could thus obtain response channels in areas in which they have no existing paging facilities and pair those channels with the other PCS channels they obtain. Under such circumstances, the reason behind creating the response channels -- i.e. allowing existing paging licensees to upgrade their systems in order to compete with PCS licensees -- would be thwarted.

In essence, AirTouch is requesting a reallocation of the channels now set aside for response channel use. AirTouch is simply requesting that the Commission open the eight 12.5 kHz unpaired channels to any PCS use. This request is untimely. As shown above, the Commission first adopted the allocation of these channels as response channels in its First Report and Order in July, 1993, reaffirmed it in its Memorandum Opinion and Order in March, 1994, and again in its Third Report and Order in May, 1994. AirTouch's request to reallocate these channels should not have waited until release of the August

1994 Second Memorandum Opinion and Order. For that reason, too, AirTouch's petition should be denied.^{5/}

II. PCIA PETITION

PCIA's Petition requests that the Commission allow licensees authorized on an exclusive market area basis to apply for response channels in any BTA or MTA that overlaps their exclusive market area. PRTC opposes this request to the extent that it would allow bidding by licensees that do not have transmitters within 20 miles of the BTA/MTA for which it is applying.

PCIA is evidently attempting to enlarge eligibility to include those licensees with exclusive regional or nationwide paging licenses which have not yet constructed facilities within 20 miles of the BTA/MTA for which they desire response channels. Allowing such licensees to bid for response channels would take away the opportunity from those licensees that could immediately put the channels to use, and give them to those licensees that do not yet have the ability to use them. The Commission did not create enough response channels to permit such use.

^{5/} AirTouch's argument that the Commission should revise the eligibility restrictions because it will receive requests for waiver of the restrictions has no merit. Regardless of the rule the Commission ultimately adopts requests for waiver may be filed. Waiver requests are simply a consequence of having rules.

Moreover, the Commission has apparently already considered such a request. The AirTouch Petition references an ex parte letter filed by NABER on June 29, 1994 proposing that "all carriers who have received or are eligible for exclusive licenses from the Commission as of May 10, 1994 would be eligible to apply for response channels in all trading areas in which they are otherwise eligible to be licensed." AirTouch Petition at 6 n.14 (quoting NABER ex parte letter). The Second Memorandum Opinion and Order references other aspects of the NABER ex parte letter,^{6/} but does not revise the rule with respect to that particular request.

For all these reasons, PRTC respectfully requests that the Commission deny the AirTouch Petition and the PCIA Petition.

Respectfully submitted,



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^{6/} See, e.g., Second Memorandum Opinion and Order at ¶ 5 and n.7.

CERTIFICATE OF SERVICE

I, Sue W. Bladek, hereby certify that on November 3, 1994, a copy of the foregoing was served by first class U.S. mail, postage prepaid, to:

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